



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155340

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 01, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,755 for the period of December 1, 2012 – December 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 23, 2012, the agency processed the Petitioner's ACCESS application for FS benefits. Petitioner submitted pay statements which the agency used in determining monthly income.

3. On September 10, 2012, the agency issued a Notice of Decision to the Petitioner informing him that effective October 1, 2012, his monthly FS benefit would be \$177. It informed him that this was based on earned income of \$1,182.87/month from [REDACTED] [REDACTED]. It also informed him that if his total gross household income exceeded \$1,211/month, he must report it to the agency by the 10th day of the next month.
4. In November, 2012, the Petitioner completed a Six Month Report Form. He did not report any changes in income.
5. On May 30, 2013, the Petitioner completed a FS renewal. He reported employment with [REDACTED] [REDACTED]. On June 14, 2013, the agency received pay statements dated May 3, 2013 and May 31, 2013 and updated the Petitioner's case. On June 17, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$142/month effective July 1, 2013. The notice also informed the Petitioner that because his income exceeds 130% FPL, he does not need to report changes in income until the next review.
6. On November 26, 2013, the agency received a wage discrepancy alert. Petitioner's monthly earned income based on the state wage record is as follows:
 - 4th quarter, 2012 = \$5,915.74/3 = \$1,971.91
 - 1st quarter, 2013 = \$5,168.56/3 = \$1,722.85
 - 2nd quarter, 2013 = \$5,161.90/3 = \$1,720.63
 - 3rd quarter, 2013 = \$4,337.80/3 = \$1,445.93
6. On December 19, 2013, the agency requested actual gross wage information from the Petitioner for the period of July 1, 2012 – December, 2013.
7. On January 10, 2014, the agency issued Notifications of FS Overissuance to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$1,755 for the period of December 1, 2012 – December 31, 2013.
8. On February 10, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in November, 2013. The agency alleges client error in failing to accurately report household income, resulting in the overissuance for the period of December, 2012 – December, 2013. The overpayment period is within 12 months of discovery.

The agency produced evidence to demonstrate that the Petitioner's gross household income exceeded 130% of the federal poverty level (FPL) in October, 2012. The Petitioner was required to report this

increase in income no later than November 10, 2012 which would have affected the Petitioner's FS benefits beginning December 1, 2012.

The agency also asserts that the Petitioner did not report changes in income during his renewal in November, 2012. However, case comments reflect that the Petitioner did submit actual wage statements for the next renewal in June, 2013. The agency calculated his monthly income based on those actual wage statements. The notice issued to the Petitioner informed him that because his income exceeded 130% FPL, he was not required to report income changes until the next review.

At the hearing, the Petitioner conceded he had not reported when his income exceeded 130% FPL in the 4th quarter of 2012, 1st quarter of 2013 and part of the 2nd quarter of 2013.

Based on the evidence, the agency properly seeks to recover an overissuance of benefits from December 1, 2012 – June 30, 2013. The agency updated the Petitioner's case based on actual pay statements he submitted for July 1, 2013. The Petitioner's income exceeded 130% FPL at that time. He was not required to report income changes until his next review. Therefore, the overpayment period should end effective July 1, 2013.

CONCLUSIONS OF LAW

The agency may properly seek to recover an overpayment of FS benefits in the amount of \$1,239 for the period of December 1, 2012 – June 30, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period to December 1, 2012 – June 30, 2013 and revise the overpayment that the agency will recover to \$1,239. The agency shall cease any collection action on an overpayment for the period of July 1, 2013 – December 30, 2013 related to the Petitioner's failure to report income over 130% FPL. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of April, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 24, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability